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May 29, 2012

Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
Hidden Hills Solar Electric Generating System (11-AFC-2)  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

|                 |                    |
|-----------------|--------------------|
| <b>DOCKET</b>   |                    |
| <b>11-AFC-2</b> |                    |
| <b>DATE</b>     | <u>MAY 29 2012</u> |
| <b>RECD.</b>    | <u>MAY 29 2012</u> |

Re: Hidden Hills Solar Electric Generating System (11-AFC-2): Response to  
“Request for Cooperative Reimbursement Agreement; Southern Inyo Fire  
Protection District” by William Ross, Pursuant to 20 C.C.R. §1715

Dear Commissioners Douglas and Peterman:

Pursuant to Section 1715 of the Commission’s regulations (20 C.C.R. § 1715), Applicant hereby files this Response to the “Request for Cooperative Reimbursement Agreement; Southern Inyo Fire Protection District” (the “Request”) by William Ross, dated May 17, 2012.

Before turning to the specific legal questions that are raised by the Request, Applicant wants to thank Southern Inyo Fire Protection District (“SIFPD”) in general, and Acting District Chief, Larry Levy, in particular, for their positive participation to date in this AFC proceeding. The Applicant appreciates SIFPD’s positive contributions to the dialogue to date and hope ultimately to be able to enter into a mutually agreed to cooperation agreement with SIFPD.

The Request seeks reimbursement for costs associated with services primarily from three individuals and their administrative support teams: (1) Larry Levy, Acting District Chief for SIFPD; (2) Ronald Coleman, former State Fire Marshall now doing business in the private sector as “Fire Force One,” and (3) attorney William Ross and his paralegals at the Law Offices of William D. Ross, located in Los Angeles and Palo Alto, California.

As discussed below, the Request is untimely and fails to satisfy the provisions of the Commission’s regulations regarding eligible costs. However, notwithstanding the untimely request, in the interests of ensuring SIFPD’s ability to respond to the Commission’s request for information, the Applicant does not object to reimbursement for the costs of SIFPD Acting Chef, Larry Levy – provided such costs otherwise satisfy the Commission’s regulations.

**I. THE REQUEST FOR REIMBURSEMENT IS UNTIMELY AND ON THAT BASIS ALONE, IT MUST BE DENIED.**

Section 1715(c)(2) requires requests for reimbursement to be filed “within 21 days of receiving a request for review from the commission.” The Request in this case is untimely. Applicant understands that SIFPD received the Commission’s “Request For Agency Participation In The Review Of The Hidden Hills Solar Energy Project, Application For Certification (11-AFC-2),” dated August 19, 2011.<sup>1</sup> Having received the request for agency participation in August of 2011, the Request dated May 17, 2012 is decidedly untimely and must be denied.

Beyond this initial notification of the need to act under Section 1715 within twenty-one days, SIFPD had subsequent actual knowledge of and participated in the Commission’s proceedings. As one example, SIFPD participated in and Chief Levy spoke at the November 3, 2011, “Informational Hearing, Environment Scoping, the Issues Identification and Scheduling Conference for the Hidden Hills Solar Electric Generating System Project.”<sup>2</sup> SIFPD has also participated in other, non-transcribed Commission events, such as various Staff workshops. Further, Mr. Ross’ letter to the Committee, dated April 30, 2012, correctly notes that CEC Staff has requested responses from SIFPD on November 17, 2011 related to CEC Staff Data Requests 95 and 96.<sup>3</sup> This same letter further notes that “there has been a District response transmitted to the Commission Staff dated February 15, 2012.”<sup>4</sup> The record is replete with evidence that SIFPD has notice of these proceedings and failed to act as required by Section 1715. The Request is untimely. Accordingly, consistent with the requirements of 20 C.C.R. § 1715, the Request must be rejected as untimely.

**II. THE APPLICANT WAIVES ITS OBJECTION TO REIMBURSEMENT FOR CHIEF LEVY’S TIME TO REVIEW MATTERS THAT WOULD BE WITHIN SIFPD’S JURISDICTION BUT FOR THE EXCLUSIVE JURISDICTION OF THE COMMISSION**

It is the Applicant’s strong preference to enter into a cooperation agreement with SIFPD for reasonable reimbursement of their costs -- outside the strictures of the Commission’s regulations discussed below. Moreover, beyond simply working out the issues associated with reimbursement for review of matters within SIFPD’s jurisdiction but for the exclusive

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<sup>1</sup> Available at: [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-08-19\\_Request\\_for\\_Agency\\_Participation\\_TN-61960.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-08-19_Request_for_Agency_Participation_TN-61960.pdf)

<sup>2</sup> Record Transcript, pp. 65-66. Available at: [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-11-03\\_transcript\\_informational\\_hearing.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-11-03_transcript_informational_hearing.pdf)

<sup>3</sup> Ross Letter, pp. 1-2. Available at: [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-05-01\\_William\\_D\\_Ross\\_Request\\_for\\_Listing\\_of\\_Interested\\_Agency\\_TN-65013.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-05-01_William_D_Ross_Request_for_Listing_of_Interested_Agency_TN-65013.pdf)

<sup>4</sup> *Id.*, p. 2.

jurisdiction of the Commission, the Applicant envisions that cooperation agreement addressing all of the District's concerns related to the construction and operation of the Hidden Hills project.

In simplest terms, the Applicant believes that all issues related to reimbursement should be worked out via cooperation agreement between SIFPD and the Applicant. The Applicant pledges to continue to work diligently with SIFPD to reach a mutually acceptable understanding. In the meantime, while an agreement is being forged, the Applicant does not object to the Request to the extent it seeks reimbursement for Chief Levy's actual time at the requested rate.<sup>5</sup>

Further, notwithstanding the fact that the Request is late-filed, the Applicant agrees to reimburse SIFPD for Chief Levy's time from the date of the Informational Hearing and Site Visit on November 3, 2011 provided that the invoicing includes sufficient information to justify each line item, again per the Commission's regulations.

Finally, Applicant notes that if the Applicant and SIFPD can enter into a cooperation agreement, the need for reimbursement for Chief Levy's time pursuant to the Commission regulations will be moot.

**III. IN ADDITION TO BEING UNTIMELY, THE REQUEST FOR REIMBURSEMENT FOR MR. COLEMAN AND MR. ROSS FAILS TO SATISFY THE REQUIREMENTS OF THE COMMISSION'S REGULATIONS FOR IDENTIFYING "ELIGIBLE COSTS" WITH SPECIFICITY.**

Even assuming for the sake of argument without conceding that the Request was timely made, the Applicant objects to the Request for Mr. Coleman and Mr. Ross because it fails to satisfy the requirements of the Commission's regulations. Accordingly, as to Mr. Coleman and Mr. Ross, the deficiencies in the Request are fatal and the request must be denied.

First, and foremost, the services for which the Request seeks reimbursement are beyond the scope of costs eligible for reimbursement under the Commission's regulations. Section 1715(a)(1) defines "Costs eligible for Reimbursement" as fitting into one of two categories: (A) permit fees "that the local agency would normally receive for a powerplant or transmission line application in the absence of Commission jurisdiction" and (B) "the added costs of services performed directly in response to Commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged." This is the universe of fees and costs

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<sup>5</sup> The Request assumes that the District Chief will be required to work 40 hours per month or one-quarter time on the Hidden Hills Application. While the Applicant believes this overstates the potential workload associated with review of matters within SIFPD's jurisdiction but for the exclusive jurisdiction of the Commission, the Applicant believes that well-stated and detailed billing summaries would address any concerns about whether the costs sought for reimbursement are "eligible" costs as defined by Section 1715.

eligible for reimbursement under the Commission's regulations. However, the Request does not identify (1) "fees" that would be collected but for the Commission's exclusive siting jurisdiction or (2) the added costs of services performed directly by SIFPD in response to Commission requests for review. Expert witness fees and fees for legal services as listed but not explained in the Request are excluded from the costs eligible for reimbursement.

Second, while it is somewhat difficult to determine based on the lack of detail, the Request appears to include request for reimbursement of certain costs expressly excluded by Section 1715(b), "Costs ineligible for reimbursement." In particular, subsection (b) of Section 1715 excludes (1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise; (2) expenses for which it receives payment from other sources; (3) expenses incurred in advocating a position as a formal intervenor to the proceeding; and (4) entertainment and first class travel expenses. Given the lack of specificity in the Request, it is difficult to ascertain which costs and expenses SIFPD seeks to recover through the Request. To the extent that the hours assumed by Mr. Ross and the fees assumed for Mr. Coleman related to advocacy or anything other than matters that would be in the jurisdiction of SIFPD but for the exclusive jurisdiction of the Commission, those costs are, by regulatory definition, ineligible for reimbursement.

Third, the Request fails to "justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review," as required by Section 1715(c)(2). The \$35,000 sought for the services of Mr. Coleman does not include a proposed hourly rate, let alone an itemization of tasks that would be required of SIFPD but for the Commission's exclusive jurisdiction and estimated hours per each such task. The one hundred twenty-eight thousand seven hundred sixty dollars (\$128,760) requested for Mr. Ross and his paralegal does not include any itemized breakdown of task associated with SIFPD's review. Without supporting evidence, these requested sums are on their face inappropriate.

### **CONCLUSIONS**

As to reimbursement for Chief Levy's time, Applicant hereby waives its objections to the Request being untimely subject only to the understanding that per the Commission's regulations, the invoices submitted for these costs identify actual time that is incurred and "justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review."<sup>6</sup>

As to the reimbursement for Mr. Coleman and Mr. Ross, based on the express language of 20 CCR Section 1715, the Request must be denied as untimely and the Applicant does not

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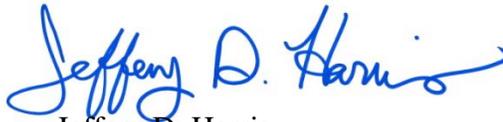
<sup>6</sup> 20 C.C.R. §1715(c)(2).

May 29, 2012  
Page 5

waive its objections. In addition to being untimely, the Request fails to satisfy the requirements of the Commission's regulations for identifying "eligible costs" with specificity. As it relates to Mr. Coleman and Mr. Ross, the Committee should issue an order denying the Request as both untimely and failing to satisfy the substantive requirements of Section 1715.

As stated in the introduction of this Response, notwithstanding the infirmities of the Request, the Applicant values SIFPD's input in the process and wishes to reach a cooperation agreement on reasonable reimbursement of costs for SIFPD -- outside the narrow confines of the Commission regulations. The Applicant commits to work with SIFPD to reach an agreement that satisfies the District and, more importantly, ensures that the District is an active participant in the Commission process, and, ultimately, a valued partner in the successful construction and operation of the Hidden Hills Solar Electric Generating System.

Sincerely,



Jeffery D. Harris  
Samantha G. Pottenger

Attorneys for Applicant

JDH/SGP/kam

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the HIDDEN )  
HILLS SOLAR ELECTRIC GENERATING ) Docket No. 11-AFC-2  
SYSTEM PROJECT )  
\_\_\_\_\_ )

**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on May 29, 2012, I served the attached *Letter to Commissioners Karen Douglas and Carla Peterman dated May 29, 2012, regarding Response to "Request for Cooperative Reimbursement Agreement; Southern Inyo Fire Protection District"* by William Ross, Pursuant to 20 C.C.R. §1715 via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Karen A. Mitchell

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**11-AFC-2**

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